

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON

v.

CISCO SYSTEMS, INC. AND
RICK FRENKEL

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C. A. NO. 6:08-CV-00089

**DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF
LAW**

TO THE HONORABLE COURT:

Defendants Cisco Systems, Inc. ("Cisco") and Richard Frenkel ("Frenkel") reurge their motion for judgment as a matter of law ("JMOL") pursuant to Federal Rule of Civil Procedure 50(a) as follows:

I. GROUND FOR JMOL

A judgment as a matter of law is appropriate when "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." FED.R.CIV.P. 50(a)(1). Defendants submit that JMOL is appropriate on each of the following grounds and request that the Court enter judgment that:

1. Plaintiff has no claim for libel because he has no evidence of, and indeed he does not seek damages for, injury to reputation, which libel protects.
2. The Articles at issue are non-actionable, on numerous grounds, including substantial truth, rhetoric, hyperbole, opinion, not defamatory, or not "of and concerning" Albritton as a matter of law.
3. The Articles at issue are not libelous per se as a matter of law.
4. There is no evidence Plaintiff sustained mental anguish damages, the only element of compensatory damages he seeks.

5. There is no evidence of fault.
6. There is no claim for libel by juxtaposition or material omission.
7. The Articles at issue involve a matter of public concern, that is, they relate to any matter of political, social, or other concern to the community.
8. Plaintiff cannot recover exemplary damages because there is no clear and convincing evidence of Chapter 41 “malice” or gross negligence as a matter of law.
9. Plaintiff cannot recover exemplary damages because there is no clear and convincing evidence of Constitutional “actual malice,” an additional, essential element of such a claim, as a matter of law.

Defendants incorporate by reference the arguments made in their Motion for Judgment as a Matter of Law.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Charles L. Babcock

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CERTIFICATE OF SERVICE

This is to certify that on this 17th day of September, 2009, a true and correct copy of the foregoing was served via electronic mail and hand delivery upon:

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